

The Owl on with life



August 2017

The goal of this newsletter is to encourage people who are growing older to keep on with the business of living. We want the experience of growing older to focus on achieving and maintaining a quality of life that is enjoyable and desirable.

If you know of a family member or friend who would like estate planning services, please consider referring them to Beth A. Swagman, PLLC.

Pet Trusts

Do you own a pet, or two, or three? Some people prefer small animals like a dog, cat, hamster, rabbit, or fish. Others prefer larger animals like a horse. Still others prefer less traditional pets such as a snake or a cockatiel. Whatever the type or size, these pets deserve your protection in an estate plan.

If you breed animals, show animals or compete for prizes with animals, your estate plan should include business documents and a business plan. You cannot assume that other family members or friends will carry on your business or will want to care for the animals in your business. An estate plan that cares for the animals and instructs others to continue or dissolve the business is important.

For most household pets, an estate plan, or pet trust, should include two important items. First, the plan should designate the person to whom your pet is re-homed. A discussion with the designated person is essential to avoid surprise and misunderstanding. Second, the plan should provide adequate financial resources for the new owner to care for your pet. When deciding the amount of financial resources, consider the age of your pet, the number of pets being re-homed, health issues the pet

has, and expenses related to the death of a pet.

The veterinarian who cares for the pet now may be helpful to locate a new owner, especially for a hard to place pet like exotic birds, goats, or a llama. A larger pet like a horse has very different boarding, feeding,

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Beth A. Swagman, PLLC

Legislative Update: The Asset Protection Act



LEGISLATIVE UPDATE:

At the end of the 2016 legislative session, the Michigan legislature passed an act that offers asset protection features. The *Qualified Disposition in Trust Act* took effect earlier this year. For people who had hoped the act might protect assets while applying for Michigan Medicaid, they will be disappointed. The act will serve the estate planning needs of those individuals with high incomes and high risk of liability including, for example, a physician with medical malpractice risks, or a married couple both of whom are high-income earners. One feature of the asset protection trust is that it be irrevocable. This means the beneficiary of the trust does not have direct access to the assets in the trust. In addition, the trustee for the irrevocable trust cannot be the beneficiary. Trustee has pure discretion to use the funds to support the beneficiary.

The irrevocable nature of the trust remains even though the beneficiary may retire or no longer need the protections.

The purpose behind the irrevocable trust is to protect the assets from creditors. For that reason, the beneficiary cannot create the trust when the beneficiary believes a creditor's claim may be coming. An activity construed as an attempt to hinder, delay, or defraud the creditor by removing access to funds will make the trust fail. This same activity may presumably apply to individuals who seek to protect assets while applying for Michigan Medicaid or other means-tested government benefits.

An irrevocable trust is not always a wise estate planning technique for an individual unless there is

Pet Trusts

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and grooming needs. The large pet may require extensive planning and greater financial resources for the new owner.

If a pet owner is or becomes disabled, whether short term or long term, a pet trust is very helpful. The pet trust designates a temporary caregiver and identifies where the pet will be re-homed, if necessary. The trustee distributes funds so the temporary or permanent new owner can care for the pet. Similarly, a pet trust is helpful to the owner who needs to relocate to a rehabilitation or continuing care facility. Some independent living and assisted living facilities allow pets, but not all. If a move to a care facility is unavoidable, the pet trust may include the provision that a care provider will bring a beloved pet to visit at your new home.

sufficient income and available financial resources so that the individual does not need to draw down from the funds in the irrevocable trust for an extended period of years.